

## **General Terms and Conditions of Purchase and Performance**

of Saint-Gobain Performance Plastics Pampus GmbH Am Nordkanal 37, 47877 Willich,  
Germany

As of: January 2017

### **§ 1 Scope of Application**

(1) All sales, deliveries and other services by any entrepreneur as defined by section 14 German Civil Code (*BGB*), any legal entity under public law or any fund under public law ("**Seller**") to Saint-Gobain Performance Plastics Pampus GmbH ("**Buyer**") (collectively "**the Parties**") shall be governed exclusively by the Buyer's General Terms and Conditions of Purchase and Performance ("**General Terms and Conditions of Purchase and Performance**").

(2) Whether or not these General Terms and Conditions of Purchase and Performance are expressly agreed upon again, they shall apply also to all future sales, deliveries and services by the Seller to the Buyer. The version current at the time the contract is concluded shall apply in each case. The Buyer shall, without undue delay, inform the Seller of all new versions of these General Terms and Conditions of Purchase and Performance.

(3) The Buyer shall not accept any terms or conditions of the Seller that conflict with or deviate from these General Terms and Conditions of Purchase and Performance, unless the Buyer has expressly consented to their application. These General Terms of Purchase and Performance shall apply even if the Buyer unconditionally accepts any delivery or other service from the Seller, or unconditionally renders any performance owed under the contract, knowing of terms and conditions of the Seller conflicting with or deviating from these General Terms and Conditions of Purchase and Performance.

### **§ 2 Initiation of the Transaction, Conclusion of the Contract, Other Declarations**

(1) Whether or not a contract comes into being, no expenditure incurred by the Seller on any visits, drafts, specimens, samples, cost estimates, quotations etc. in the course of initiating the transaction shall give rise to any liability to bear costs, or any other liability, on the part of the Buyer.

(2) Purchase orders from the Buyer shall always be subject to change without notice until they have been placed or confirmed in writing by the Buyer. Prior to accepting any purchase order, the Seller shall point out to the Buyer, for the purpose of correction and/or completion, any and all obvious inaccuracies (e.g. typing or arithmetical errors) and omissions in the purchase order, including the purchase order documents. Otherwise, the contract shall be deemed not to have been concluded.

(3) The Buyer shall be bound by its own offers for 12 weeks.

(4) Verbal commitments made by any representatives or other assistants of the Buyer shall be binding only if and in so far as the Buyer has confirmed the same in writing.

(5) All legally relevant declarations and notifications required to be made by the Seller to the Buyer or any third party must be in writing.

### **§ 3 Delivery and Performance Period, Contractual Penalty**

(1) The delivery and performance period stated in the purchase order shall be binding. If the Seller expects to be unable to comply with any agreed delivery or performance period, it shall inform the Buyer thereof in writing without undue delay.

(2) In the event of delayed delivery or performance, the Buyer shall be entitled to demand, apart from performance, a contractual penalty in the sum of 0.5% of the order total for every business day of delay, in total however capped at 5 % of the order total. The Buyer shall be entitled to assert this penalty at any time up until final payment has been made. Further statutory claims shall remain unaffected. With regard to damage claims, section 340, subsection 2 German Civil Code (*BGB*) shall apply.

#### **§ 4 Delivery, Documents, Passage of Title**

(1) Except where otherwise agreed upon, deliveries shall be made on the basis of "Delivery Duty Paid" ("DDP"; Incoterms 2010) Saint-Gobain Performance Plastics Pampus GmbH, Am Nordkanal 37, 47877 Willich.

(2) A delivery note stating the date (issuance and dispatch), the content of the delivery (item number and number of items) and the Buyer's order reference (date and number) shall be enclosed with every delivery. A dispatch note with the same content shall be sent to the Buyer under separate cover from the delivery note. The Buyer shall not be deemed responsible for any delays in processing or payment resulting from any breach of the above requirements.

(3) Title to the goods shall pass to the Buyer no later than upon payment. Any prolonged or extended retention of title is hereby excluded.

#### **§ 5 Prices and Payment Terms**

(1) The price quoted in the purchase order shall be binding and shall, except where otherwise agreed upon, apply to delivery DDP. All prices shall be understood to include statutory value-added tax, unless such value-added tax is shown separately.

(2) Except where otherwise agreed upon, the price shall include all services and ancillary services of the Seller (e.g. assembly, installation) and all incidental expenses (e.g. proper packaging, transportation expenses, including any transportation and liability insurance). The Seller shall accept any and all packaging material returned by the Buyer.

(3) Except where otherwise agreed upon, the agreed price shall be due and payable within 60 calendar days of complete delivery and performance (including any acceptance testing possibly agreed upon) and receipt of a proper invoice. If payment is made within 14 calendar days, the Buyer shall be entitled to deduct a 3 % cash discount from the net amount invoiced.

(4) The Buyer shall be able to process invoices only if they indicate the order number as specified in the purchase order. The Seller shall be responsible for all consequences ensuing as a result of non-compliance with this obligation, unless the Seller proves that such consequences are not imputable to any fault on its part.

(5) The Buyer shall not be obliged to pay interest after the due date. The Seller's claim for payment of default interest shall remain unaffected. Commencement of any default in payment shall be governed by the statutory provisions. In any event, however, a reminder from the Seller shall be a prerequisite for such commencement.

(6) The Buyer shall, to the statutory extent, be entitled to rights of set-off and retention, as well as the right to plead non-performance of the contract. In particular, the Buyer shall be entitled to withhold due payments as long as it is still entitled to claims against the Seller on the basis of incomplete or defective services.

(7) The Seller shall have the right of set-off or retention only if and in so far as its counterclaims are undisputed or have been determined by a final and non-appealable court judgement or its counterclaims are based on the same contractual relationship.

#### **§ 6 Supplies on the part of the Buyer, Tools, Moulds etc.**

(1) In so far as the Buyer makes items available to the Seller (e.g. software, finished goods or semi-finished goods), it shall retain title thereto ("**Items under Retention of Title**"). Any processing or remodelling by the Seller shall be deemed to have been carried out on behalf of the Buyer. If any Item under Retention of Title is processed together with other items not belonging to the Buyer, the Buyer shall acquire joint title to the new item in the ratio of the value of the Item under Retention of Title (purchase price plus value-added tax) in relation to the other processed items at the time of processing.

(2) If any Item under Retention of Title is inseparably mixed with other items not belonging to the Buyer, the Buyer shall acquire joint title to the new item in the ratio of the value of the Item under Retention of Title (purchase price plus value-added tax) in relation to the other mixed items at the time of mixing. If such mixing occurs in such a manner that the Seller's item is to be regarded as the main item, it shall be deemed agreed that the Seller shall transfer joint title to the Buyer on a pro-rata basis. The Seller shall hold such sole or joint property in safekeeping for the Buyer.

(3) In so far as the value of the security interests to which the Buyer is entitled under subsection (1) and/or subsection (2) exceeds by more than 10 % the purchase price of all Items under Retention of Title not yet paid for, the Buyer shall, if the Seller so requests,

release such security to this extent. The Buyer reserves the right to choose the security to be released.

(4) The Buyer shall retain title to all tools, moulds, samples and similar items. Such items shall be used only for manufacturing the goods ordered by the Buyer. The Seller shall insure the items on a replacement value basis, at its own expense, against fire damage, water damage and theft. The Seller hereby assigns to the Buyer all compensation claims arising from this insurance. The Buyer hereby accepts this assignment. The Seller shall carry out in due time, at its own expense, any and all servicing, inspection, maintenance and reinstatement work necessary in respect of the Buyer's tools. The Seller shall give the Buyer immediate notification of any and all incidents. If the Seller culpably fails to do so, damage claims shall remain unaffected.

## **§ 7 The Buyer's Documents**

The Buyer shall retain any and all rights of title, copyrights and industrial property rights in respect of illustrations, drawings, samples and other documents ("**Documents**"). This shall apply also to Documents not expressly designated as "confidential". The Seller shall pass on such Documents to third parties only with the Buyer's prior express written consent.

## **§ 8 Warranty for Defects, the Seller's Liability for Damages**

(1) In the case of a defect, the Buyer shall be fully entitled to the statutory rights. In particular, the Buyer shall be entitled to demand that the Seller either eliminate the defect or deliver a new item, at the Seller's option. The Buyer hereby expressly reserves the right to claim damages, including damages in lieu of performance, regardless of the degree of fault and the amount.

(2) In any event, the product specifications forming part of the respective contract, particularly as a result of having been designated or referred to in the Buyer's purchase order, or incorporated into the contract in the same way as these General Terms and Conditions of Purchase and Performance shall be deemed to be the agreement on qualities within the meaning of the law. In this respect, it shall be irrelevant whether the product specifications originate from the Buyer, the Seller or the manufacturer.

(3) Contrary to section 442, subsection 1, sentence 2 German Civil Code (*BGB*), the rights under the warranty for defects shall fully exist also in cases where, as a result of gross negligence, the Buyer remained unaware of any defect at the time of the conclusion of the contract.

(4) All expenditures incurred by the Seller for the purpose of checking for and remedying defects shall be borne by the Seller, even if it emerges that no defect actually existed. The Buyer's liability for damages in cases of any unjustified request for the elimination of defects shall remain unaffected, provided that the Buyer was aware of such absence of a defect or was unaware thereof owing to gross negligence on its part.

(5) If the Seller fails to comply with its obligation to render supplementary performance within a reasonable period set by the Buyer, the Buyer shall be entitled to eliminate defects or procure a replacement itself, or through third parties, at the Seller's expense. If supplementary performance by the Seller has failed or is unreasonable for the Buyer (e.g. owing to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage or loss), or if the Seller seriously and definitively refuses to render supplementary performance, it shall not be necessary to set a time limit. However, the Buyer shall inform the Seller without undue delay, beforehand if possible, of any self-help measures on the part of the Buyer itself or third parties.

(6) The time-bar period shall be 36 months, calculated from the time of dispatch under § 4 (1) or from the time of acceptance. Longer statutory time-bar periods shall remain unaffected hereby.

(7) The Seller shall be liable for damages, regardless of the degree of fault and the amount, in accordance with the statutory provisions.

## **§ 9 Supplier Recourse**

Supplier recourse shall be governed by the statutory provisions (sections 478 and 479 German Civil Code (*BGB*)). These provisions shall apply also in cases where, prior to being sold to a consumer, the goods have been further processed by the Buyer or any of its customers (e.g. by installation into another product).

## **§ 10 Product Liability, Insurance**

(1) In so far as the Seller is responsible for any product damage caused within its sphere of control and organisation and is itself liable externally, the Seller shall indemnify the Buyer against all third-party damage claims on first request.

(2) Within the scope of this obligation to indemnify, the Seller shall also reimburse any and all expenditures, under sections 683 and/or 670 German Civil Code (*BGB*) or under sections 830, 840 and/or 426 German Civil Code (*BGB*), incurred within the framework of or in connection with any recall campaign carried out by the Buyer. The Buyer shall, in so far as possible and reasonable, inform the Seller of the content and scope of such recall measures to be carried out and give the Seller the opportunity to comment. Other statutory claims shall remain unaffected.

(3) The Seller shall effect and maintain product liability insurance with a minimum combined limit of 10 million EUR per case of personal injury/property damage. Further damage claims of the Buyer shall remain unaffected.

## **§ 11 Property Rights**

(1) The Seller warrants that no third-party rights shall be infringed within the Federal Republic of Germany in connection with its delivery.

(2) If a third party brings a claim against the Buyer on account of such rights, the Seller shall, on first written request, indemnify the Buyer against such claims. The Buyer shall not be entitled to enter into any agreements whatsoever with such a third party, particularly any settlement, without the Seller's consent.

(3) The Seller's duty to indemnify shall relate to all necessary expenditure incurred by the Buyer on the basis of or in connection with any claim brought by a third party, unless the Seller proves that the breach of duty on which the infringement of property rights is based was not imputable to any fault on its part.

(4) The time-bar period for such claims shall be 36 months, calculated from the time of dispatch under section 4 (1) or from the time of acceptance.

## **§ 12 Export Control Law**

(1) The Supplier must fulfill all requirements of the national and international export, customs and foreign trade law ("International Trade Law") that apply to the goods and services to be supplied. The Supplier must obtain all required shipment authorizations and export licenses, unless, according to International Trade Law, we or the third party and not the Supplier are responsible for applying for the permits.

(2) The Supplier must inform us in writing as soon as possible and no later than 10 days before the delivery date of all information and data which we require in order to comply with the applicable International Trade Law on the export, transfer and import as well as re-export of goods and services in case of reselling, also for each product and service in particular:

- the Export Control Classification Number (ECCN) pursuant to the U.S. Commerce Control List (CCL) or the classification "EAR99" if the item is subject to the U.S. Export Administration Regulations. If the item is enumerated on the United States Munitions List or otherwise subject to the International Traffic in Arms Regulations (ITAR) we ask for immediate information;
- all relevant control numbers of the Export Control List (provided the item is not specified in the Export Control List, it should be labeled as "AL: N")
- the statistical goods number according the current goods classification of the external trade statistics and the HS (Harmonized System) Code;
- the country of origin (non-preferential origin) and,
- if requested so by the Customer: Supplier's declarations on the preferential origin (with European suppliers) or certificates on preferences (with non-European countries) ("Export Control and External Trade Data").

(3) In the event of alterations to the origin, properties of the goods or services or applicable external trade law, the Supplier must update the Export Control and External Trade Data as soon as possible and to inform us no later than 10 days before the delivery date in writing. The Supplier shall cover all expenses and damages incurred through missing or faulty Export Control and External Trade Data.

### **§ 13 Choice of Law, Place of Jurisdiction**

(1) The laws of the Federal Republic of Germany, excluding the UN sales law (CISG), shall apply.

(2) The place where the Buyer's registered office is situated shall be the place of performance.

(3) The place where the Buyer's registered office is situated shall be the place of jurisdiction. However, the Buyer hereby reserves the right to bring an action against the Seller at the Seller's place of general jurisdiction.